

In the Matter of the
Application of the

UNITED TRANSPORTATION
UNION

alleging a representation dispute
pursuant to Section 2, Ninth, of
the Railway Labor Act, as
amended

involving employees of

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY

29 NMB No. 81

CASE NO. R-6903
(File No. CR-6734)

FINDINGS UPON
INVESTIGATION-
DISMISSAL

August 14, 2002

The services of the National Mediation Board (NMB or Board) were invoked by the United Transportation Union (UTU) on September 18, 2001, to investigate and determine who may represent for the purposes of the Railway Labor Act, 45 U.S.C. § 151, et seq., (RLA) personnel described as “Train and Engine Service Employees,” of The Kansas City Southern Railway Company (KCS or Carrier).

For the reasons below, the Board finds that the proper crafts or classes are Train Service Employees and Engine Service Employees. Therefore, the Board dismisses the application.

PROCEDURAL BACKGROUND

On September 18, 2001, the UTU filed an application with the Board, pursuant to 45 U.S.C. § 152, Ninth, (Section 2, Ninth)

alleging a representation dispute among the “Train and Engine Service Employees” of the KCS.

The UTU represents all of the train service employees on the KCS system and the engineers on TennRail and MidLouisiana.¹ The Brotherhood of Locomotive Engineers (BLE) represents most of the engineers on KCS.

The Board assigned Susanna Pequignot to investigate.

On September 19, 2001, the Board asked the Carrier to provide a list of potential eligible voters and signature samples for the employees in the Train and Engine Service Employees craft or class by September 26, 2001. The Board advised the Carrier, BLE, and UTU that they could provide initial position statements by September 26, 2001.

On September 21, 2001, the BLE requested an extension of time in which to file an initial position statement. The Investigator granted the extension until October 9, 2001. On September 25, 2001, the Carrier requested an extension of time until October 16, 2001, to submit a List of Potential Eligible Voters. The Investigator granted the extension. On October 9, 2001, the Carrier requested an extension of time to file its initial position statement. The Investigator granted the extension and advised the Carrier, the BLE, and the UTU that they could provide initial position statements by October 23, 2001. The UTU submitted an initial position statement on October 9, 2001. The Carrier submitted a List of Potential Eligible Voters and signature samples on October 12, 2001. On October 22, 2001, the Carrier

¹ The KCS System consists of the following properties: Kansas City Southern (includes Louisiana and Arkansas); Gateway Western (GW); Eastern Division (including MidSouth, SouthRail, TennRail and MidLouisiana) (ED); and CP/KCS Joint Agency (JA).

requested an extension until December 17, 2001, to file an initial position statement. The Investigator granted the extension to all participants.

The Carrier submitted a list with 1145 potential eligible voters on October 12, 2001. The Carrier submitted a list with 126 additional names on February 21, 2002.

On December 18, 2001, the BLE filed an initial position statement. The UTU responded on December 28, 2001. The BLE replied to the UTU's response on January 7, 2002.² The Investigator requested information from the Carrier on January 28, 2002, and the Carrier supplied the information on February 22, 2002.

On March 27, 2002, the BLE requested the Investigator instruct the Carrier to clarify its February 22, 2002, submission. The UTU responded to the BLE's request on March 28, 2002, and the Carrier responded on April 2, 2002. The BLE responded to the UTU's response on April 3, 2002. On April 3, 2002, the Investigator requested additional information from the Carrier. The UTU filed a submission on April 4, 2002. The Carrier provided the additional information on April 23, 2002. On April 26, 2002, the BLE requested additional time in which to file its response to the Carrier's April 23, 2002, submission. The Investigator granted the extension until May 8, 2002. The BLE and the UTU filed responses to the Carrier's April 23, 2002, submission on May 8, 2002.

² On January 16, 2002, the General Committee of Adjustment of the BLE for the Gateway Western Railway craft or class of Engineers, SouthRail, and Mid South (General Committee) filed a statement. The General Committee is not a participant in this proceeding and, therefore, its comments are not considered.

On May 13, 2002, the Investigator notified the parties that an on-site investigation was necessary and that the Investigator would interview two KCS managers, two UTU witnesses and two BLE witnesses.

The Investigator conducted an on-site investigation at the Kansas City yard in Missouri the week of May 20, 2002. During the field investigation, the Investigator toured the KCS yard operations, including the remote control operations. In addition, the Investigator interviewed 10 randomly selected train and engine service employees, one randomly selected Train Dispatcher, and witnesses proffered by the UTU, BLE, and the Carrier.

On May 17, 2002, the BLE filed a response to the UTU's May 8, 2002, submission, which responded to the Carrier's April 23, 2002, submission. On May 20, 2002, the BLE renewed its request for an evidentiary hearing with the Board.³

Pursuant to the Investigator's direction, the UTU and the BLE filed final position statements on May 24, 2002.⁴ In addition,

³ The BLE Passenger Coalition (BLE Coalition) submitted comments on May 23, 2002. The BLE Coalition is not a participant in this proceeding and, therefore, its comments are not considered.

⁴ The Brotherhood of Railroad Signalmen; United Steelworkers of America; American Train Dispatchers Department; Transport Workers Union of America; International Association of Fire Fighters; International Association of Machinists and Aerospace Workers; Brotherhood of Maintenance of Way Employees; Sheet Metal Workers' International Association; and the International Brotherhood of Electrical Workers have separately written the Board urging the Board to
(continued...)

the General Committee submitted a final position statement with the Board on May 24, 2002. On June 3, 2002, the BLE submitted a reply to the UTU's final position statement.⁵

ISSUE

What is the proper craft(s) or class(es) for Engineers, Conductors and Trainmen at the KCS?

CONTENTIONS

UTU

UTU maintains that the appropriate craft or class is Train and Engine Service Employees. UTU argues that "the same UTU and BLE National Agreement provisions apply with respect to the mandatory line of progression from trainmen to conductor to engineer, and with respect to the incidental work rules covering work performed by trainmen, conductors and engineers" as applied in the *Terminal Railroad Ass'n of St. Louis*, 28 NMB 187 (2000).

UTU argues that although the Carrier maintains separate rosters for train service employees and engineers, since implementation of the 1985 UTU National Agreement, there has been a mandatory line of progression from trainmen to engineer.

⁴(...continued)

find separate crafts of locomotive engineers and train service employees. The AFL-CIO and the Transportation Trades Department, AFL-CIO, wrote the Board urging it to conduct a hearing.

⁵ The Board did not consider this submission as it was filed after the Board's May 24, 2002, deadline for final submissions.

As a result, “a significant percentage of the active engineers on the KCS were promoted from the ranks of trainmen.” UTU argues that “these engineers were originally trained, qualified and promoted as trainmen.” UTU asserts that once trainmen qualify as engineers they are cross-utilized as trainmen or engineers until their engineer seniority entitles them to work on a regular basis as an engineer.

UTU argues that the Board’s Representation Manual (Manual) and Board case law confirm that “historical patterns” is only one factor relevant to craft or class analysis and that “work-related community of interest” is particularly important. UTU contends that conductors and engineers share the requisite community of interest to constitute a combined craft or class. UTU maintains that this pervasive community of interest “parallels the one which existed between flight engineers and pilots in *United Air Lines*, 3 NMB 56 (1961), and demonstrates that, as in *United*, a single craft or class is warranted.” In addition, UTU argues that “the Board has never ruled that ‘historical patterns of representation’ are frozen in place or that new developments are to be ignored.”

UTU asserts that the Board’s Manual and case law confirm that a work-related community of interest is especially important when determining an appropriate craft or class. UTU notes that the Manual does not list “cross-utilization” as a factor to consider when making craft or class determinations, therefore, cross-utilization should not be the controlling factor when making craft or class determinations. The UTU relies on *Texas Mexican Railway*, 27 NMB 257 (2000), and states that BLE’s “mantra that ‘cross-utilization’ is the *sine qua non* of a craft or class of Train and Engine Service Employees” has been rejected in recent Board decisions.

UTU objects to the Board’s request for information from the Carrier in which the Board requested ebb and flow and cross-

utilization data for the period June 15, 2001, to September 15, 2001, rather than a one-year period. UTU asserts that cross-utilization based on preponderance information is to determine individual eligibility challenges and this information is not appropriate for craft or class determinations. UTU argues that seasonal and business fluctuations may skew the results.

UTU says that the following developments in the working conditions of operating employees on KCS lead to the “pervasive community of interest among trainmen and engineers”: 1) the sharp reduction in crew consist on most trains; 2) the operation of trainmen and engineers as a single operating unit with joint and equal responsibility for the movement of trains according to common operating and safety rules; 3) the collapse of dual lines of progression (from trainman to conductor or from fireman to engineer) into a single, mandatory line of progression from trainmen to engineer for all operating personnel hired after November 1, 1985; 4) the development of overlapping incidental work rules for the performance of essential work by both trainmen and engineers; 5) the ebb and flow of employees between trainmen and engineer positions; 6) the policy of equal discipline for conductor and engineer positions; and 7) the common bargaining interests of trainmen and engineers in the areas of pay, benefits, training, and seniority.

In addition, UTU contends that there has been a historical trend since 1993 in the railroad industry to combine trainmen and engineers in a single craft or class. UTU argues that “there is no reason why if similar facts are presented on a Class I carrier that a finding of a craft or class of Train and Engine Service Employees should not be found.”

UTU argues that the extensive job interrelationship and parallel bargaining concerns demonstrate that a combined craft or class of Train and Engine Service Employees is warranted.

UTU states that there is no need for a hearing in this matter and asks the Board to order an election in the combined craft or class.

BLE

The BLE first contends that the UTU has not made the requisite showing of interest as required by Manual Section 6.601. The BLE argues that to invoke the Board's representation processes, the UTU is required to make a 50 percent showing of interest within each existing craft or class.⁶

The BLE asserts that the law governing the disposition of this case is well settled in *Union Pacific Railroad Co.*, 27 NMB 244 (2000) (Board dismissed UTU's application to combine the craft or class of engineers and train service employees). The BLE asserts that the Board determined that a combined craft or class of Train and Engine Service Employees is inappropriate on a large, Class I railroad such as KCS. The BLE requests a full evidentiary hearing similar to that undertaken in *Union Pacific, above*.

The BLE urges the Board to reject UTU's arguments and decline to follow *Terminal Railroad*, 28 NMB 187 (2000). The BLE asserts that "UTU's position ignores the Board's admonition in *Terminal Railroad*, – that such a departure from the settled crafts and classes is available only '[i]n limited cases and based upon the facts presented . . . on non-Class I railroads'." The BLE states that the Board's decision to affirm the Panel's decision in *Union Pacific Railway Co.*, 28 NMB 183 (2000), on the same day the *Terminal Railroad, above*, decision was issued, makes "crystal clear its intention to follow *Union Pacific* in all similar Class I cases."

⁶ The BLE notes that it is not privy to UTU's showing of interest submission.

The BLE asserts that “cross-utilization is a key factor in determining whether any established demarcation between separate crafts has been obliterated or obscured to such a degree that it no longer exists.” The BLE argues that “[w]ithout that finding, . . . , § 2, Ninth, does not authorize deviation from existing craft or class lines.”

The BLE argues that even if the Board rejected *Union Pacific*, 27 NMB 244 (2000), and followed the *Terminal Railroad* analysis for Class I railroads, engineers and trainmen on KCS do not share a sufficient community of interest to justify a combined craft or class. The BLE states that only 45 out of 1219 operating employees (3.7 percent) worked in both train service and engine service from June 15, 2001- September 15, 2001. The BLE asserts that 27 of the 45 operating employees worked in one craft or the other more than 80 percent of their work time. Therefore, the BLE argues, only 18 (1.48 percent) of all operating employees are interchanged to any significant extent.

The BLE contends that the progression from trainman to engineer is not mandatory, but rather dependent on Carrier discretion in calling for trainmen to voluntarily bid for engineer training classes. The BLE notes that this situation is identical to that in *Union Pacific*, 27 NMB 244 (2000).

The BLE argues that “UTU has the burden of demonstrating the propriety of deviating from historical craft or class lines.” The BLE also argues that UTU must show that “the work-related characteristics justifying the original employee grouping have changed”

The BLE asks the Board to dismiss UTU’s application.

KCS

KCS has not taken a position in this dispute.⁷

FINDINGS OF LAW

Determination of the issues in this case is governed by the Railway Labor Act, as amended, 45 U.S.C. §§ 151-188. Accordingly, the Board finds as follows:

I.

KCS is a common carrier by railroad as defined in 45 U.S.C. § 151, First.

II.

The BLE and UTU are labor organizations and/or representatives as provided by 45 U.S.C. § 152, Ninth.

III.

45 U.S.C. § 152, Fourth, gives employees subject to its provisions, “the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall

⁷ The National Railway Labor Conference sent a letter to the Board stating that “[t]he industry is completely neutral about which of the two organizations should represent its employees However, we think it clear on its face that in today’s circumstances, representation of a single craft or class of operating employees, rather than divided crafts, would create a more stable and constructive labor relations environment, thereby improving railroad operations.”

be the representative of the craft or class for the purposes of this chapter.”

IV.

45 U.S.C. § 152, Ninth, provides that the Board has the duty to investigate representation disputes and to designate who may participate as eligible voters in the event an election is required.

STATEMENT OF FACTS

The KCS System includes the following properties: Kansas City Southern (includes Louisiana and Arkansas); Gateway Western (GW); Eastern Division (including MidSouth, SouthRail, TennRail and MidLouisiana) (ED); and CP/KCS Joint Agency (JA). The KCS has approximately 1200 operating employees.

The BLE represents the Locomotive Engineers on Kansas City Southern (including Louisiana and Arkansas); GW; MidSouth; and SouthRail, and the BLE maintains separate bargaining agreements for engineers on each of these railroads. UTU is the recognized representative of the Train Service Employees on KCS. The UTU also represents the engineers on MidLouisiana and TennRail. The UTU and BLE agreements with KCS are substantially similar with respect to pay increases, rules, working conditions, overtime, holidays, and vacations.

The duties of the KCS train service employees and engine service employees are set forth in Rule 1.47 of the KCS General Code of Operating Rules as follows:

The conductor and the engineer are responsible for the safety and protection of their train and observance of the rules. If any conditions are not

covered by the rules, they must take every precaution for protection.

A. Conductor Responsibilities

1. The conductor supervises the operation and administration of the train (if trains are combined with more than one conductor on board, the conductor with the most seniority takes charge). All persons employed on the train must obey the conductor's instructions, unless the instructions endanger the train's safety or violate rules. If any doubts arise concerning the authority for proceeding or safety, the conductor must consult with the engineer who will be equally responsible for the safety and proper handling of the train.
2. The conductor must advise the engineer and train dispatcher of any restriction placed on equipment being handled.
3. When the conductor is not present, other crew members must obey the instructions of the engineer concerning rules, safety, and protection of the train.
4. Freight conductors are responsible for the freight carried by their train. They are also responsible for ensuring that the freight is delivered with any accompanying documents to its destination or terminals. Freight conductors must maintain any required records.

B. Engineer Responsibilities

1. The engineer is responsible for safely and efficiently operating the engine. Crew members must obey the engineer's instructions that concern operating the engine. A student engineer or other qualified employee may operate the engine under close supervision of the engineer. Any employee that operates an engine must have a current certificate in his possession.
2. The engineer must check with the conductor to determine if any cars or units in the train require special handling.

C. Conductor and Engineer Responsibilities

Conductors and engineers must ensure that their subordinates are familiar with their duties, determine the extent of their experience and knowledge of the rules, and instruct them, when necessary, how to perform their work properly and safely.

D. Other Crew Members' Responsibilities

1. To ensure the train is operated safely and rules are observed, other crew members must assume as much responsibility as possible to prevent accidents or rule violations.
2. When the conductor or engineer fails to stop the train, or emergency requires, other crew members must stop the train immediately.

The Carrier maintains separate engineer and train service seniority rosters for all properties with the exception of TennRail and MidLouisiana.⁸ There were 485 names on the engineers' seniority roster and 738 names on the train service employees' seniority roster as of September 15, 2001.

Operating employees on KCS fall into two categories: 1) pre-1985 hires and 2) post-1985 hires.⁹ These two categories are subject to different rules for progression. For employees hired prior to 1985, progression from train service to engine service is voluntary. Pursuant to the 1985 UTU National Agreement, in effect on Kansas City Southern (including Louisiana and Arkansas), the Joint Agency and Gateway Western, Train Service Employees hired after November 1, 1985, are required to qualify for promotion to engineer, as needed, in seniority order.

The Carrier defines "ebb and flow" as the "moving back and forth between assignments in two different crafts where there is a line of progression between the two crafts. Ebb and flow depends on the employee's seniority in the craft to which

⁸ UTU represents both the train service employees and the engineers on TennRail and MidLouisiana.

⁹ The distinction between pre-11/1/85 employees hired into train service, who are not subject to mandatory promotion under the national operating craft agreements, and those hired post-11/1/85, who are subject to the mandatory promotion requirement, is not applicable to the TennRail and MidLouisiana portions of the Eastern Division (which have about 30 employees), because the national operating craft agreements did not apply to those properties. The mandatory promotion requirement was first made applicable to post-11/1/85 train service employees on Gateway Western on October 1, 2001, and to employees on the MidSouth and SouthRail portions of the Eastern Division on April 6, 2001.

employees are ‘promoted.’” When the need for engineers increases, the most senior qualified train service employees willing to work in engine service, are called up. There is no forced “promotion” to engine service unless the Carrier does not get any bids for the open engineer positions. If a forced “promotion” is necessary, then the train service employee with the least seniority takes the forced “promotion”. In the event that the need for engineers decreases, the engineer with the lowest seniority will be demoted to train service. The Carrier must demote engineers in reverse seniority order. Employees eventually gain enough seniority in engine service to work exclusively in engine service and are no longer subject to demotion.

During the period June 15, 2001, through September 15, 2001, 45 out of 1219 (3.7 percent) operating employees worked in both train service and engine service. Approximately 16.3 percent of the 733 active employees in the train service craft or class worked in both train service and engine service during the period June 15, 2001, through September 15, 2001.¹⁰

Seventeen percent of train service employees hold engineer certifications, therefore, 83 percent of train service employees are not qualified as engineers. No employees are currently being trained for engineer certification. The Carrier does not have a set program for certification; this is done on an as needed basis.

On January 21, 2002, KCS began implementation of remote control technology at its rail terminal in Kansas City, Missouri. Remote control technology consists of two parts: the radio transmitter carried by ground personnel and the computer

¹⁰ There were 728 employees in the Train Service craft or class on June 15, 2001, and 738 employees in the Train Service craft or class on September 15, 2001. Therefore, the average number of Train Service employees during the period June 15, 2001, through September 15, 2001, was 733.

onboard the locomotive. Personnel on the ground communicate the desired speed and direction of the train to the on-board computer and the computer does the rest, including controlling the throttle and the brake; and adjusting for the weight of the train and condition of the track. Remote control operators can manually override the computer.

The Carrier has 16 yards with remote control operations on two of those yards. The Carrier assigned the work of operating a remote transmitter to train service employees. However, previous agreements with the BLE restrict assigning the remote control operations to train service employees on the Gateway Western and the Eastern Division of KCS. KCS plans to implement remote control technology at its yards in Beaumont/Port Arthur, Texas; and Baton Rouge, Louisiana in the summer of 2002.

DISCUSSION

I. Work-Related Community of Interest

In *Union Pacific Railroad*, 27 NMB 247 (2000), a three member panel appointed by the Board found that conditions on the *Union Pacific* did not warrant a combined Train and Engine Service craft or class. The Panel distinguished the Board's determination in *United Air Lines*, 3 NMB 56 (1961). The Panel cited the fact that there was less than one percent cross-utilization over a 90-day period. The Panel in *Union Pacific* also noted that 80 percent of the train service employees with pre-November 1, 1985, seniority dates were given access to engineer training and declined to take this training.

In the present case, the UTU once again relies on the Board's finding in *United, above*, and argues that the community of interest among train service employees and engineers on KCS parallels the one which existed between flight engineers and pilots in *United, above*. In *United, above*, the Board found that the pilot

or captain, reserve pilot, copilot and second officer or flight engineer constitute a single craft or class of Flight Deck Crew Members. The UTU's reliance on *United, above*, is misplaced. In *United, above*, the Carrier required pilot certification of flight engineers as a condition of assignment to jet aircraft. In fact, flight personnel could, based upon seniority and qualifications, progress from flight engineer to copilot to captain. Flight engineers were required to pass pilot aptitude tests as a condition of employment. In addition, flight engineers with pilot certification were believed to be sufficiently trained to take a pilot's seat in case of an emergency.

This is not the case on KCS. KCS does not require engineer certification of train service employees as a condition of assignment to a train as a crew member. Post-November 1, 1985 hires on only a portion of the KCS system are required to be engineer certified. TennRail and MidLouisiana employees are not subject to mandatory promotion requirements. In addition, the mandatory promotion requirement was first made applicable to post-November 1, 1985 train service employees on Mid South and SouthRail portions of the KCS system on April 6, 2001, and to train service employees on Gateway Western on October 1, 2001. Moreover, on the portions of the system where mandatory progression rules apply, progression is not automatic. Progression depends on Carrier discretion; successful bidding; training; and Federal certification. Train service employees are not authorized to take over the engineer's role at any time. Even train service employees with engineer certification, qualified on the route on which they are currently operating, are not authorized to take over the engineer's role.

A. The Composition and Permanency of Employee Groupings

In deciding craft or class issues, the Board considers the following factors:

[T]he composition and relative permanency of employee groupings along craft or class lines; the functions, duties, and responsibilities of the employees; the general nature of their work; and the extent of community of interest existing between job classifications.

Manual Section 5.1.

The Board has considered many requests to depart from the “historical patterns of representation in the railroad industry” which provide the basics for craft or class determinations. See *Kiamichi Railroad Co., Inc.*, 19 NMB 212 (1992); *Dakota, Minnesota & Eastern R.R. Co.*, 16 NMB 126 (1989); *Iowa Interstate R.R.*, 13 NMB 271 (1986); *Genessee and Wyoming R.R. Co.*, 12 NMB 261 (1985); *Metro-North Commuter R.R.*, 12 NMB 38 (1984); *Ontario Midland Ry.*, 10 NMB 18 (1982).

The UTU relies heavily on the Board’s determination in *Terminal Railroad*, 28 NMB187 (2000) to support its contention that a combined craft or class is appropriate. However, the facts in *Terminal Railroad* are distinguishable. *Terminal Railroad* is a non-Class I railroad with 120 operating employees. All post train service employees hired after November 1, 1985, on *Terminal Railroad* are subject to the mandatory line of progression and typically trainmen on *Terminal Railroad* are certified as engineers within two to three years of the trainmen’s seniority date. In addition, over one-third of the train service employees with pre-November 1, 1985, seniority dates opted for engineer training and became certified engineers. Finally, ebb and flow on *Terminal Railroad* showed that over one-third of the employees on the engineers’ seniority roster worked as both engineers and switchman, spending about half of their time working outside the Engineer craft or class.

The UTU's reliance on *The Texas Mexican Railway Co.*, 27 NMB 257 (2000) (TexMex) is also misplaced. In *TexMex* the Board found a combined craft or class of Train and Engine Service Employees. TexMex is a very different system from KCS. TexMex is a small regional railroad with 540 miles of track and 102 operating employees. TexMex maintains two overlapping seniority rosters and engineers maintain seniority simultaneously on both rosters. TexMex and the UTU maintain a single agreement covering both train and engine service employees. In contrast, KCS is a Class I railroad with 4000 miles of track; over 1200 operating employees; separate seniority rosters; and separate agreements.

Similarly, this case is very different from *Florida East Coast R.R. (FEC)*, 21 NMB 35 (1993), where the Board found a combined craft or class of Train and Engine Service Employees. In *FEC above*, the Carrier had a single seniority list and there was extensive interchange and cross-utilization of operating employees. In addition, in *FEC above*, more than 33 percent of the operating employees performed both train and engine service work. In contrast, on KCS, less than 4 percent of the operating employees performed work in both train service and engine service.

In analyzing the permanency of employee groupings, the Board finds the mandatory line of progression from trainmen to engineer highly significant. *Terminal Railroad, above* at 200. Pursuant to the 1985 UTU Agreement, train service employees are required to qualify for engine service. However, there is no forced "promotion" to engine service on KCS unless the Carrier does not get any bids for the open engineer positions. On KCS, 83 percent of train service employees are not qualified as engineers.

To fill a temporary vacancy (1 day or more), the Carrier uses engineers on the engineer extra board. (Another engineer may also exercise his seniority and mark-up). If the extra board is

depleted, then the Carrier calls rested engineers on their day off to fill the temporary vacancy. If that fails, then the Carrier calls a qualified engineer off the nearest extra board. Once these options are exhausted, then the Carrier calls the most senior demoted engineer. To fill a permanent engineer vacancy, (i.e. a new train or an engineer changes positions, retires, etc.), the most senior engineer qualified employee to bid gets the position.

B. The Job Functions, Requirements, and Work Conditions of Train Service Employees and Engineers

Although train service employees and engineers have joint responsibilities, such as the safe operation of the train, most of their duties are job specific. Simply put, train service employees instruct the engineer on where to go and how to get there while the engineer moves the train. In addition, engineers are required to obtain Carrier certification in accordance with Federal regulations.

In *FEC, above*, since 1978 the locomotive engineer and road conductors had been covered by a single collective bargaining agreement. The scope clause of that agreement provided for the interchange of job duties between engineers and train service employees. On KCS, less than 4 percent of the engineers are interchanged.

In *FEC, above*, the carrier routinely cross-trained the operating employees. There is no inter-craft bidding on KCS. An engineer promoted from train service cannot use his accrued train service seniority to bid on a train service assignment unless he is demoted because he cannot hold any engineer position. In fact, an engineer has to exhaust all of his engineer's seniority (including being posted on an engineer's extra board) before he can work in train service.

In order to assess the functions, duties, and responsibilities of KCS train service and engine service employees, the Board requested cross-utilization and “ebb and flow” data for the period June 15, 2001, and September 15, 2001. This is consistent with Board precedent. *See Terminal R.R.*, 28 NMB 187 (2000); *Union Pacific*, 28 NMB ; *Texas Mexican Ry. Co.*, *above*; *Florida East Coast R.R. Co.*, *above*, (the Board considered several factors including a review of three month period of cross-utilization and found that the proper craft or class was Train and Engine Service). The “ebb and flow” data established that less than 4 percent of KCS’ operating employees worked in both train service and engine service during the period.

II. Remote Control Technology

The Carrier is in the process of implementing remote control technology at many of its yards. The Carrier states that while train service employees will operate the radio transmitter in addition to performing their regular tasks, the “computer in the remote control system takes over the manipulation of the throttle, brake and other locomotive systems, [and] essentially replaces the engineer in his traditional role of handling the locomotive.”

The Carrier has 16 yards; only two currently have remote control operations. KCS plans to implement remote control technology at two additional yards in the summer of 2002. Therefore, 12 yards would not have remote control operations. Previous agreements on the Gateway Western and the Eastern Division of the KCS awarded remote control operations to the engineers. Therefore, the Carrier has no plans to implement remote control operations at 4 of its 16 yards: St. Louis, Jackson, Meridian and Vicksburg. Remote control operations are currently used on a very limited basis on KCS properties.

Additionally, in KCS’ yard there is a remote control zone where locomotives are moved solely by remote control. However,

the zone does not stretch the entire length of the yard. Any locomotives operated by remote control outside the zone must have a certified engineer aboard. Therefore, the KCS must still employ certified engineers to maintain operations even in the two yards where remote control operations have been implemented.

Qualified employees holding train service seniority may bid for the remote control operator positions. All engine service employees at the Kansas City and Shreveport yards hold train service seniority. Therefore, engine service employees demoted to train service are eligible to bid on the new remote control operator positions.

In The New York and Long Branch Railroad and The Central Railroad Co. of New Jersey, the Board found

With the advance of technology, the basic communications device used by the telegrapher was eliminated. The unique skill necessary for the use of telegraph instruments no longer was a requirement for the job. Thus, the primary skill of the telegrapher, which was a basis of recognizing telegraphers and related classifications as a separate craft or class, disappeared .

5 NMB 331 (1974)

This reasoning has a very limited application in the present case. Remote control technology allows train service employees qualified in remote control technology to dictate, through a computer, the movement and sometimes the speed of the train. However, the remote control operations only affect the switching yards, and at present time, only two switching yards have implemented remote control operations. In addition, in the two yards where the remote control technology is in use, they are only used in "remote control zones."

CONCLUSION

At present, less than 4 percent of KCS' operating employees perform work in both train service and engine service. In addition, remote control technology is used in only 2 of KCS' 16 yards, and even there it is not fully implemented.

Technology and/or other negotiated changes, such as work rules, could ultimately result in a combined craft or class of Train and Engine Service Employees on KCS, however, the evidence at this point does not warrant such a finding. The UTU is not precluded from applying for a combined craft or class of Train and Engine Service employees in the future.

Accordingly, the UTU's application is converted to NMB Case No. R-6903 and dismissed.

By direction of the NATIONAL MEDIATION BOARD.

Benetta Mansfield
Chief of Staff

Copies to:

Emerson M. Bouchard
Kathleen A. Alexander
Brenda Council, Esq.
William C. Walpert
Thomas C. Brennan, Esq.
Roland P. Wilder, Jr., Esq.
John O'B. Clarke, Jr., Esq.
John R. Koonce
Byron A. Boyd, Jr.
Clinton J. Miller, III, Esq.
Jerry L. Batton